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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/726,815 | 12/03/2003 | Paul Kateman | 17303-0008D1 | 4121 |

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CESARI AND MCKENNA, LLP
88 BLACK FALCON AVENUE
BOSTON, MA 02210

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| EXAMINER |
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TAPOLCAI, WILLIAM E

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| ART UNIT | PAPER NUMBER |
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3744

DATE MAILED: 07/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/726,815

Applicant(s)

KATEMAN ET AL.

Examiner

William E. Tapolcai

Art Unit

3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6,9-11,14,15,18,21,22,24,26-32 and 39-44 is/are allowed.
- 6) ☒ Claim(s) 1-5,7,8,12,13,16,17,19,23,25 and 33-38 is/are rejected.
- 7) ☒ Claim(s) 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 3744

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 7, 8, 19, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neumann et al. Neumann et al discloses the claimed steps of scraping the layer from the freezing surface 60 at 36, 38, and 40. The scraper 36 is positioned at the periphery of the freezing surface. The scrapers further consolidate the scrapings into a hard block. Neumann et al thus discloses all of the steps except for the type of liquid being used. The type of liquid being frozen is considered to be a matter of obvious choice, because no criticality or unexpected results are seen or have been shown for the use of a liquid product mix instead of water.

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Neumann et al in view of Fogt. Neumann et al discloses the claimed invention except for the step of monitoring the temperature of the surface. Fogt teaches an ice maker having a sensor 290 for monitoring the temperature of the ice mold. It would be obvious to provide Neumann et al with the step of monitoring the temperature of the surface 34, in view of Fogt, for the purpose of controlling the freezing temperature of the surface.

4. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neumann et al in view of Kateman et al. Neumann et al discloses the claimed invention except for the step of mixing a liquid ingredient and a fluid ingredient. Kateman et al teaches a freezer including a mixer for two ingredients. It would be

obvious to substitute, for water as the substance to be frozen, a mixer for two ingredients, as taught in Kateman et al, for the purpose of freezing a desired mixture of food products.

5. Claims 16, 17, 23, 25, and 33-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neumann et al in view of Rader. Neumann et al discloses the claimed invention except for the horizontal surface being rotary. Rader teaches a freezer having a horizontal surface which is rotary. It would be obvious to make the horizontal surface of Neumann et al rotary, in view of Rader, for the purpose of ease of maintenance and repairs.

6. Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 6, 9-11, 14, 15, 18, 21, 22, 24, 26-32, and 39-44 are allowed.

8. Applicant's arguments filed June 14, 2004 have been fully considered but they are not persuasive. Applicant argues that the scrapings of Neumann et al are not collected or consolidated at the periphery of the freezing surface and are not compacted to form a product. On the contrary, Neumann et al clearly discloses a scraper 36 which does indeed perform all of these functions. The position of scraper 36 is clearly seen in Fig. 1 to at the periphery of the freezing surface. That the scrapers function to consolidate and compact the scrapings is seen in Fig. 6.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William E. Tapolcai whose telephone number is (703) 308-2640. The examiner can normally be reached on Mon. - Thurs., 6:30 to 5.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise L. Esquivel can be reached on (703) 308-2597. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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William E. Tapolcai
Primary Examiner
Art Unit 3744

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July 13, 2004